

WATER COUNCIL MEETING

Dept. of Environmental Services
29 Hazen Dr., Concord, N.H.

July 12, 2006
9:00 a.m.

Members present: Councilors Barrett, Bridges, Bradley, Butler, Cowan, Densberger, DiMarzio, Lussier, Lynch, Lyons, Northrop, Patenaude, Phillips and Varotsis

Members absent: Councilors Barrett, Dupee, and Northrop

John Bridges, Chairman, called the meeting to order at 9:00 a.m.

1. Anthony Blenkinsop, Esq. – DOJ/Attorney General's Office/Civil Bureau

Anthony will be working with Anne Edwards, representing various councils at DES, including the Water Council. He would like to be on the agenda every 6 months, to make sure they are addressing the Council's needs and answering questions. He understands the sensitive issues the council deals with and wants the councilors to know that he is here to help out as much as possible. As issues arise, Anthony urges councilors to contact him by phone or e-mail, at any time. (Ext. 1271)

Councilor Varotsis asked what effect the court decision has now on USA Springs, as far as the Council is concerned. Anthony replied that he will be discussing that with Anne Edwards and will be looking into it a little more, and realizes the council has tabled a couple of issues before them, because of the issue before the Supreme Court, so he will be looking into that and will get back to the council with a more definite answer as to how to proceed with the various matters that are currently tabled.

Councilor Bridges suggests continuing to table those two items until next month.

2. Approval of Minutes of May 10, 2006 Meeting

A motion was made by Councilor Varotsis to accept the minutes of the May 10, 2006 meeting as presented. The motion was seconded by Councilor Bradley. The Council unanimously voted to approve the minutes.

3. Approval of State Aid Grants and Amendment

State Aid Grants

Steve Snell of the Wastewater Engineering Bureau requested approval of five new state aid grants as set forth in a memo from Bureau Administrator John R. Bush, P.E. to Harry T. Stewart, P.E., Director, Water Division dated June 29, 2006.

Councilor Varotsis moved to approve the grants and recommend favorable action by the Governor and Executive Council by adoption of the following resolution in its entirety. Councilor Bradley seconded the motion and it was unanimously voted.

WHEREAS, The following municipalities have applied to the Department of Environmental Services, under the provisions of RSA 486, for grants in the amounts listed, with the condition that adjustments will be

made after work is completed and final eligible costs are established, to aid in the defraying of the costs resulting from the construction of sewage disposal facilities, as defined in said Chapter:

<u>MUNICIPALITY</u>	<u>PROJ. NO.</u>	<u>PROJECT DESCRIPTION</u>	<u>AMOUNT</u>
Amherst	C-721	Baboosic Lake Wastewater Impr., Phase I	\$122,321
Hanover	C-722	WWTF Interim Improvements 2	\$ 69,795
Wolfeboro	C-723	King Street Sewer Improvements	\$ 35,823
Wolfeboro	C-724	Mill St. & Varney Rd. Sewer Improvements	\$ 81,255

WHEREAS, The Department of Environmental Services has examined said applications as to the eligibility of the construction costs for State contributions; and

WHEREAS, The Water Council finds that said projects are intended to control or reduce pollution in the surface waters of the State as defined in RSA 485-A;

NOW THEREFORE, The Water Council finds that all of the provisions of RSA 486 have been met by said applicants and respectfully recommends that the Governor and Executive Council approve said grants and authorize payment thereof through the Department of Environmental Services as provided for in said Chapter.

4. Status of Appeals

Michael Sclafani distributed an Appeals Status Report and reviewed pending appeals with the council. Michael noted that most of them are in a holding pattern but offered to run through each one.

- **Docket No. 03-10 WC – Conservation Law Foundation**

At the May 10, 2006 council meeting, Council votes to deny the Motion for Rehearing. On June 29, 2006, CLF appeals the Water Council Decision to the NH Supreme Court. For the purposes of the Council, the appeal is closed and there is no action needed. Should the court remand it to the Council, then it will be reopened and be addressed at that point.

- **Docket No. 03-14 WC - Gerald A. Bell – Water Division Denial of Application for Waiver of Septage Rules**

Trial on Petition for Declaratory Judgment in Merrimack Superior Court has been rescheduled for mid Oct. 2006

Stay remains in effect pending the resolution of the declaratory judgment action and no action is required by the Council.

- **Docket No. 04-05 WC - Appeal of Freudenberg-NOK General Partnership**

Trial on Petition for Declaratory Judgment in Grafton Superior Court is scheduled for mid Oct. 2006.

A stay remains in effect on this appeal pending a ruling by the Grafton County Superior Court on the state's petition for declaratory judgment.

Rene Pelletier noted that the Dam Bureau is working with the owner on dam removal. One of the dams is south of the bridge in Bristol, and is owned by Freudenberg. Rene also indicated that the Dam Bureau will be meeting with Freudenberg on July 13 to discuss technical issues involved with the dam removal.

- **Docket Nos. 04-18 WC and 04-19 WC – Appeal of Thaddeus Dymon and Town of Newport**
A stay remains in effect pending the resolution of a boundary line dispute in Sullivan County Superior Court. A final decision is expected around October/November 2006.
- **Docket No. 05-17 WC - Appeal of Daniel Osborn**
On April 12, Appeal Hearing was convened. Council voted 5-4 to deny the appeal. On June 14, Council issued written Decision & Order to deny the appeal. Parties have until July 14 to file for reconsideration.
- **Docket No. 05-21 WC - Appeal of Save Our Groundwater**
On its own initiative, the Council voted 10-0 at a previous meeting to table this appeal pending advice from legal counsel re: Jurisdiction & Standing. Council needs to decide status of this case (i.e., continue to table it, accept the appeal, dismiss the appeal, decline to accept the appeal, etc.).
- **Docket No. 05-22 WC - Appeal of Town of Nottingham**
On its own initiative, the Council previously voted 10-0 to table this appeal pending advice from legal counsel regarding Jurisdiction & Standing. Council needs to decide the status of this case (i.e., continue to table it, accept the appeal, dismiss the appeal, decline to accept the appeal, etc.)

Councilor Butler made a motion to table both of the appeals: Docket No. 05-21 WC and 05-22 WC. Councilor Cowan seconded the motion. The Council voted unanimously to table both of these appeals.

- **Docket No. 06-04 WC - Appeal of Andrews and Carpenter**

On June 23, 2006, DES, the Appellant, and the Town of Salem filed Witness Lists. Also on June 23, 2006, DES, and the Town of Salem both filed an Exhibit List. In addition, the Town of Salem filed a Partially Assented to Motion to Dismiss. On June 28, 2006 the Appellant filed an Exhibit List, and Objection to Motion to Dismiss, and a Motion to Recuse (the Hearings Officer)/ On June 30, 2006 DES filed a Partially Assented-to Objection to the Appellant's Motion to Recuse. On July 3, 2006 DES filed an Objection to the Appellant's Amended Witness List. On July 6, 2006 Appellant Stephen Andrews filed an Appearance of Lynn Anderson on behalf of Appellant John Carpenter.

After discussion, Hearings Officer denies Motion to Recuse.

Appeal Hearing to convene following the close of the Council Meeting today

- **Docket No. 06-08 WC – Conservation Law Foundation**
On June 1, 2006, a Notice of Appeal is filed by Hand Delivery (30th Day), On June 7, 2006, Attorneys Edith Pacillo and Mark Hodgdon (AGO) file Appearance on behalf of

the Applicant (NH DOT). On June 29, 2006, NH DOT (Applicant) files a Motion to Intervene. The Council needs to Accept or Dismiss the Notice of Appeal, and if accepted, then Grant or Deny the Applicant's Motion to Intervene.

Councilor Cowan makes a motion to Dismiss the Notice of Appeal and get it on the floor for discussion, and is seconded by Councilor Patenaude.

After discussion,

Councilor Cowan withdraws his Motion to Dismiss the Notice of Appeal

Councilor Lussier makes a Motion to Accept the Notice of Appeal and is seconded by Councilor Bradley, and it was unanimously voted.

4. **Rules:** Env-Wq 401 (currently Env-Ws 421) Best Management Practices for Groundwater Protection

Steven Roy and Paul Susca came before the Council to discuss the proposed rules. The Council's input of clarification of several sections was noted.

Councilor Bradley made a motion to approve the rules and to authorize the Water Supply Engineering Bureau to proceed with the rulemaking process to readopt with amendments Env-Ws 421. Councilor Lussier seconded the motion. The Council unanimously voted in favor of this motion.

Rules: Readoption with Amendments – Env-Wq 800 Sludge Management Rules (currently Env-Ws 800)

Pat Hannon & Mike Rainey came before the Council to discuss the proposed rules. The Council's input on clarification of several sections was noted.

Councilor Bradley made a motion to approve the rules and to authorize the bureau to proceed with the rulemaking process to readopt with amendments Env-Ws 800 as Env-Wq 800. Councilor Varotsis seconded the motion and it was unanimously voted.

6. **2006 Legislation**

Rene Pelletier, Assistant Division Director, provided a final summary of legislation passed during the recent legislative session.

7. **Other Business**

Michael Sclafani noted that not all of the Council members are aware that Bobbi Benedict, former Council Clerk, is no longer with DES but has moved on to a position at the Adjutant General's Office, and in the interim Melanie Wheelock is filling in as Acting Council Clerk, taking the Council's notes, along with the other Council Clerk's duties. DES is actively pursuing a replacement for that position and hopefully it won't be too long before Bobbi's old position is filled. John Bridges suggests that Michael prepare a letter on behalf of the

Water Council, to Bobbi, thanking her for her services for the Council, and that she did an outstanding job.

8. **Next Meeting**

The next meeting is scheduled for August 9, 2006.

9. **Adjournment**

A motion was made by Councilor Cowan to adjourn. The motion was seconded by Councilor Butler and unanimously voted.

The meeting adjourned at approximately 10:00 a.m.
